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ABSTRACT

In this report prepared to assist the business community in undertaking its responsibility to reexamine warranty policies and practices in the light of consumer expectations, it is recommended that the following policies and practices be adopted by businesses and trade associations: (1) Product warranties should be effective for a period sufficient to allow latent defects to surface, (2) product warranties should be transferable to subsequent owners during period of coverage, (3) manufacturers should provide clear, complete, and simple product and warranty literature for sales personnel and cousumers' use, (4) written warranties should be expressed clearly and simply, (5) trade associations should establish and coordinate industry-wide programs of warranty simplification and clarity, (6) warrantors should systematically and periodically review warranty service policies and programs to eliminate unnecessary constraints inhibiting good service. Similarly, positive incentives should be adopted to encourage effective warranty service, (7) warrantors should regularly review warranty policies on compensation to servicing agencies to insure that they adequately cover all reasonable expenses, (8) warrantors should establish direct working relationships with consumer protection agencies and assist these agencies in resolving consumer problems, and (9) warrantors should encourage and support autonomous industry-wide consumer complaint review panels established by trade associations. (WL)

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Product Warranties

Business Guidelines to Meet Consumer Needs

Report of the Sub-Council on Warranties and Guarantees of the National Business Council for Consumer Affairs

December 1972

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Honorable Peter G. Peterson
Secretary of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

Attached for your consideration is a report entitled "Product Warranties: Business Guidelines to Meet Consumer Needs," prepared by the Sub-Council on Warranties and Guarantees of the National Business Council for Consumer Affairs.

In accord with the assignment the NBCCA received from the President, the Sub-Council has attempted to identify in its report actions which would resolve legitimate consumer problems in the marketplace. We believe that goal will be met if the Sub-Council's recommendations are widely adopted in the business community.

We urge that you convey the report to businesses and trade associations with your request for immediate action on its recommendations.

Sincerely,

Robert E. Brooker

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Summary

Unless specifically disclaimed, warranties cover all products in the marketplace; therefore, prior to marketing new products businesses should specifically consider whether or not those products should be accompanied by a warranty. In making a decision about whether to warrant a product, consumer expectations and the consumer's ability to adequately evaluate and inspect the product before sale should be considered. In determining warranty coverage, warrantors should consider that from the consumer's standpoint it is desirable for all components to be fully covered. Similarly, it is significantly useful to the consumer if products requiring technical installation which can affect product performance carry installation warranties provided by the manufacturer, retailer, or other installer.

In setting the duration of an express warranty, warrantors should consider the following:

Page

RECOMMENDATION 1 8

PRODUCT WARRANTIES SHOULD BE EFFECTIVE FOR A PERIOD SUFFICIENT TO ALLOW ANY LATENT DEFECTS TO SURFACE.

This principle is fundamentally fair to the consumer and should be applied without exception when a warranty is offered.

Except in those cases where warranties are dependent on some occurrence external to the product itself:

RECOMMENDATION 2 10

PRODUCT WARRANTIES SHOULD BE TRANSFERABLE TO SUBSEQUENT OWNERS DURING THE PERIOD OF COVERAGE.

Communication of warranty content to consumers is done through advertising and point of sale representations and literature. To insure that consumers obtain accurate information, manufacturers have the following responsibility:

RECOMMENDATION 3 12

MANUFACTURERS SHOULD PROVIDE CLEAR, COMPLETE, AND SIMPLE PRODUCT AND WARRANTY LITERATURE FOR USE BY SALES PERSONNEL AND BY CONSUMERS.

With respect to the warranty itself,

RECOMMENDATION 4 13

WRITTEN PRODUCT WARRANTIES SHOULD BE EXPRESSED IN CLEAR AND SIMPLE LANGUAGE.

At the industry level, trade associations can play a useful role:

Page

RECOMMENDATION 5 13
TRADE ASSOCIATIONS SHOULD ESTABLISH AND COORDINATE INDUSTRY-WIDE PROGRAMS OF WARRANTY SIMPLIFICATION AND CLARITY.

The most critical problems with warranties arise after sale when the consumer seeks service. Therefore,

RECOMMENDATION 6 16
WARRANTORS SHOULD SYSTEMATICALLY AND PERIODICALLY REVIEW WARRANTY SERVICE POLICIES AND PROGRAMS TO ELIMINATE UNNECESSARY CONSTRAINTS INHIBITING GOOD SERVICE. SIMILARLY, POSITIVE INCENTIVES SHOULD BE ADOPTED TO ENCOURAGE MORE EFFECTIVE WARRANTY SERVICE.

Warranty service is not an area for cost cutting which will compromise the consumer's right to quick and effective repairs. As part of this policy,

RECOMMENDATION 7 18
WARRANTORS SHOULD REGULARLY REVIEW WARRANTY POLICIES ON COMPENSATION TO SERVICING AGENCIES TO INSURE THAT THEY ADEQUATELY COVER ALL REASONABLE EXPENSES.

This practice can eliminate incentives to pass on costs to the consumer by avoiding service, raising prices for out of warranty work, or in other ways.

Corporations can use other organizations in continuing programs to bring about consumer satisfaction with warranty service:

RECOMMENDATION 8 21
WARRANTORS SHOULD ESTABLISH DIRECT WORKING RELATIONSHIPS WITH CONSUMER PROTECTION AGENCIES AND ASSIST THESE AGENCIES IN RESOLVING CONSUMER PROBLEMS.

In addition,

RECOMMENDATION 9 21
WARRANTORS SHOULD ENCOURAGE AND SUPPORT AUTONOMOUS INDUSTRY-WIDE CONSUMER COMPLAINT REVIEW PANELS ESTABLISHED BY TRADE ASSOCIATIONS.

The Sub-Council urges that all of the above policies and practices be adopted by businesses and trade associations.

Table of Contents

	Page
List of Sub-Council Members	ii
Letter of Transmittal	iii
Summary	iv
Foreword	1
I. General Background	2
II. Offering Product Warranties	4
Offering a Warranty	4
Warranty Coverage	5
Parts Coverage	6
Installation Coverage	7
Duration	8
Allocating Warranty Obligations	9
Unnecessary Restrictions	10
Communication of Warranties	10
Advertising	10
Point of Sale Information	11
Written Warranties	12
Trade Association Role	13
After Purchase Warranty Information	14
III. Providing Warranty Service	15
Consumer Expectations	15
Choice of Servicing Mechanism	15
Increasing Liability on Warrantors	15
Commitment of Warrantors to Effective Service	16
Adequacy of Compensation	17
Parts Availability	18
Qualified Mechanics	18
Quality Control and Inspection	20
Collection of Complaint Data	20
IV. Conclusion	22

Foreword

This report has been prepared by the Sub-Council on Warranties and Guarantees of the National Business Council for Consumer Affairs (NBCCA). The Council, composed of over 100 business leaders, was established by President Nixon on August 5, 1971, and was asked to advise the Federal government on consumer affairs, and in the process to "identify and encourage voluntary activities by the business community to benefit consumers."

In carrying out its tasks under this general guideline, the Sub-Council concluded that the most valuable service it could perform would be to examine warranty practices from the consumer's* viewpoint, to identify policies and practices which could encourage responsiveness to his expectations and promote fair and effective implementation of warranty promises.

Most manufacturers and retailers of consumer goods who offer warranties do so for one reason—it's good business. Sellers recognize that one way to maintain satisfied customers is to assure them that their purchases will perform as they should—and that if they do not perform as they should, they will be repaired or replaced.

While most warrantors offer product warranties as a service to consumers, it is clear that consumers are, to some extent, dissatisfied both with the form and coverage of many warranties and particularly with the availability and quality of servicing for products under warranty.

It is thus apparent that businessmen must reexamine their own warranty policies and practices in the light of consumer expectations. This report has been prepared to assist the business community in undertaking this responsibility.

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*As used in the report "consumer" refers to individual, as distinct from commercial, purchasers and users in the marketplace.

I. General Background

A warranty is an assurance of product quality given by a seller to a buyer. The practice is derived from a fundamental aspect of sales, namely, that the buyer expects fair value from his purchase, and it has been in existence in some form since the beginnings of trade.

Historically, warranties have been viewed as a matter of bargaining between seller and buyer, and until recently the law has avoided interference with this contractual arrangement. The Common Law evolved the theory of *caveat emptor* —let the buyer beware, and in the absence of evidence of express promises by the seller, the courts have generally put the burden on the buyer to fully examine the goods to discover defects prior to consummating the sale. While courts differentiated between latent defects for which relief would be granted the buyer, and those which should have been discoverable prior to or at the time of sale, the main thrust of the Common Law was not consumer protection.

"... the main thrust of the Common Law was not consumer protection.

Today, the use of warranties is specifically covered by codified commercial law. Forty-nine states and the District of Columbia have adopted versions of the Uniform Commercial Code establishing ground rules for offering or failing to offer warranties.

This Code creates two types of warranties: *express warranties*, which arise out of the dealings between the buyer and seller as a result of advertising, labeling, or oral or written statements; and *implied warranties*, which include two types —implied warranties of fitness for a particular purpose, and implied warranties of merchantability.

The implied warranty of fitness for purpose arises by operation of law when the seller has reason to know the purpose for which the goods are being purchased and the buyer is relying on the seller's skill to furnish suitable goods. The implied warranty of merchantability, on the other hand, is applicable to most sales, and it covers the following situations, as described in the Uniform Commercial Code:

"Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any."

Implied warranties of merchantability under the UCC accompany all consumer product transactions, unless they are specifically disclaimed. While such warranties can provide significant protection for the consumer, two factors diminish their importance: first, consumers are rarely aware of implied warranties, and, second, the extent of protection offered in a given instance can often be resolved definitively only by litigation.

As the consumer movement has developed over the past few years, considerable attention has been devoted by government, business and consumer groups to warranty issues. A 1969 task force report prepared by the Federal Trade Commission, the Department of Commerce, the Department of Labor and the Special Assistant to the President for Consumer Affairs focused on appliance warranties and service. Working closely with the business community, the task force endorsed a number of recommendations, many of which have been acted upon by the industry. A similar study of automobile warranties was undertaken by the Federal Trade Commission, and warranty legislation has been introduced in legislatures at both the state and Federal levels of government.

Despite improvements which have been made in some warranty practices, surveys indicate that the problems are still significant. The following chapters of this report provide an overview of warranty practices with recommendations for improvement.

II. Offering Product Warranties

OFFERING A WARRANTY

The question of whether, and how, to offer warranties is an issue for all manufacturers. As noted in the previous section, all products sold in the marketplace are warranted by operation of law unless the applicable implied warranties are specifically disclaimed, or the product is clearly labeled for sale "as is" or otherwise identified as without warranty. Thus, failure to consider whether to warrant a product is equivalent to an affirmative decision to warrant it. In view of this, and in the interest of clear communication with customers, businesses should specifically consider before marketing new products whether or not a warranty should accompany the product.

"...failure to consider whether to warrant a product is equivalent to an affirmative decision to warrant it."

In determining whether or not to cover a product with an express warranty, the major consideration should be the consumer's expectations about the product and his ability to evaluate the product in terms of those expectations. These expectations, and the intensity of the consumer's reaction if the product fails to conform to these expectations, are frequently related to cost. Consumers usually are more disturbed by product malfunctions in a $25 product than in one costing only $2.50. They become even more concerned with defective major appliances, automobiles, or similar high ticket items. Thus, as a general rule, the higher the price of the item, the more desirable it is to accompany it with a specific, written product warranty.

"Many products are not susceptible to adequate or knowledgeable inspection by the consumer at the time of sale."

The complexity of the product is also an important factor in this consideration. Many products are not susceptible to adequate or knowledgeable inspection by the consumer at the time of sale. For inexpensive products, this usually does not create problems, but as price increases, consumers are more likely to seek or expect an assurance of quality.

Consider the position of the average consumer about to purchase a glass ashtray. Virtually everything that is pertinent and worth knowing can be determined simply by exam-

ing the article itself. It is either cracked or chipped, or it isn't. It is either big enough or small enough for the desired use, or it isn't. Finally, the durability of the glass and the handling or care required are normally apparent from its appearance.

Contrast this with the purchase of a new automobile. Even if the consumer is fortunate enough to be an expert automotive mechanic, it is almost impossible to identify anything other than superficial defects. He is unable to detect, for example, whether the exhaust manifold has a casting flaw that will cause a crack to occur after the engine has been heated and cooled approximately 100 times. Nor may he tear down the transmission to make certain it has been properly assembled.

Further examples of this lack of knowledge, plus the consumer's inability, as a practical matter, to acquire such knowledge prior to purchase, could be cited for every complex article marketed today.

Thus, the responsibility lies with the marketer to provide protection to the consumer on products which he cannot fully evaluate prior to sale. The most practical means of providing this protection is by offering an express product warranty.

WARRANTY COVERAGE

Once the decision has been made to offer an express product warranty, the specific nature of that coverage must be determined. The most important decisions include what parts and labor will be covered and the duration of the warranty.

"The real problems arise when a product is sold under a warranty which turns out to offer less protection than expected by the consumer."

These are the elements of warranty coverage that have most concerned consumers and their representatives. Overall, the most vocal consumer objections do not come from products clearly marketed for sale "as is". The real problems arise when a product is sold under a warranty which

turns out to offer less protection than expected by the consumer. Many of these problems arise from the wide variation in use of the words "warranty", "guarantee", "full warranty", "full guarantee", and similar terms. Corrective action is needed by businesses, individually and through trade associations, to insure more consistent usage of these terms.

In this process, the use of written warranties against defects should not be made obligatory. There is always room for merchandising products with little or no coverage, especially for consumers who are willing to exchange the protection afforded by a warranty for a lower price or some other consideration. The important point is that the buyer know the extent of coverage at the time of sale. There should be a clear and conspicuous disclosure that no warranty is applicable, if such is the case, to insure that the consumer who accepts a product on an "as is" basis understands the possible consequences of his choice.

"Businesses have the difficult task of assessing what is 'fair' warranty coverage for specific products."

Businesses have the difficult task of assessing what is "fair" warranty coverage for specific products. Because products differ so considerably, no universal rules are possible. Each product has to be evaluated on its own merits and on the basis of reasonable consumer expectations. In undertaking this determination warrantors should consider the following questions:

1. Are all parts essential to the proper functioning of the product adequately covered?
2. Is the duration of the warranty sufficient?
3. Are consumer obligations under the warranty reasonable?
4. Are there unnecessary restrictions?

Parts Coverage

In determining the type of coverage to offer, warrantors should consider the simple, all-embracing warranty, since this is the most meaningful to the consumer. From the consumer's standpoint, it is desirable that all components be

fully covered unless some definite physical characteristic militates against this policy.

Short-lived components, such as light bulbs, filters, spark plugs, or other low cost parts which can be expected to function only for a relatively short portion of the life span of the product within which they are installed, are frequently excluded from warranty coverage. However, these and other components consumed and replaced as a normal incident of use of the warranted product might be separately covered, especially where they are costly items.

Generally, the exclusion of any components which form a permanent part of the warranted product should be avoided. If such an exclusion is necessary, it should be clearly disclosed in the warranty certificate, not buried in fine print.

"Generally, the exclusion of any components which form a permanent part of the warranted product should be avoided."

Installation Coverage

Certain consumer products are not operational when purchased, but require installation. For certain types of products, central air conditioning for example, installation is a complex technical procedure, and inadequate installation can significantly affect product performance. The consumer should be able to rely not only on the product design but should also be assured that the system, after installation, will perform as expected. From the consumer's point of view, it is desirable that products requiring technical installation which can affect product performance carry installation warranties provided by the manufacturer, retailer, or installer, as may be appropriate, depending upon who provides the installation service.

Ideally, installation coverage should be part of an all-encompassing product warranty. Such coverage can and should be given by warrantors when they perform installation services directly or through their designated agents. However, many products are installed by independent firms. In these cases, the manufacturing warrantor cannot reasonably be expected to accept the responsibility for inadequate

installation. He can, however, encourage dealers to warrant installation. In addition, he can encourage dealers and consumers to use installers who offer installation warranties.

Duration

One of the basic purposes of a written warranty is to protect the consumer against defects in material or workmanship which cannot be readily detected prior to purchase, and which may become apparent only after a product has been used. Therefore, the following guideline should be used as a general rule by all warrantors:

RECOMMENDATION 1

PRODUCT WARRANTIES SHOULD BE EFFECTIVE FOR A PERIOD SUFFICIENT TO ALLOW ANY LATENT DEFECTS TO SURFACE.

The applications of this principle will vary greatly depending upon the physical characteristics of the product and the usual method and manner of use.

The actual length of time for which warranty coverage is appropriate for any particular product is, of course, dependent upon many factors, including economic considerations, engineering evaluations, and past history of failure. Although the specific duration of any product warranty is an internal business decision, setting the duration of coverage long enough to permit sufficient use to identify hidden defects is strictly a minimum term demanded by considerations of basic fairness. There are doubtless many situations in which manufacturers, for competitive or other reasons, may desire to give coverage beyond this minimum term, not so much to guarantee against latent defects, but rather as an assurance of durability. In fairness to consumers, a seller who extends the warranty period in this manner should not set a period of extended coverage longer than the time the product can reasonably be expected to function. Extended coverage warranties should not misrepresent the useful life of most of the products covered.

Since practically all warranted products are purchased for a utilitarian purpose, the starting date for warranty coverage should begin when use actually begins. For most consumer durables, this date can be assumed to coincide with the date of delivery or installation. There are, however, many situations (for example, builder-installed appliances in a new home) where special provisions should be made to defer the starting date of the warranty until the date on which use will actually commence. Deferred starting dates should also be provided in the case of products with a restricted season of use; for example, a 90-day warranty covering a snowmobile bought in August is of little value unless the coverage is deferred until the winter season. In order to avoid an open-ended warranty, however, it would be reasonable for the seller to provide for an overall time limitation, such as from date of delivery.

"There are, however, many situations . . . where special provisions should be made to defer the starting date of the warranty . . ."

Allocating Warranty Obligations

Many warranties, especially those accompanying costly consumer durables, contain terms which place obligations on both the warrantor and the consumer; thus the warrantor may agree to replace parts free of charge, but may require the consumer to pay postage. Similarly, consumers may be required to pay labor costs after a specified period, or use the product in a specified manner to keep the warranty in effect.

All businesses should be sure to examine these arrangements from the consumer's viewpoint, and be certain to allocate obligations in a manner which prevents the consumer's original bargain from being compromised. For example, it would be fair if, throughout the initial period of warranty coverage when latent defects might arise, the consumer is entitled to repair or replacement without cost for parts or labor. Similarly, in the case of products which are expended through use, expense can fairly be prorated between the consumer and the warrantor on a formula equitable to both.

Unnecessary Restrictions

In determining exclusions and restrictions in warranties, care should be taken to fully evaluate their necessity. For example, many warranties extend only to the "original purchaser." In some instances this may be reasonable, as when the warranty's duration is dependent upon external factors such as "the owner's lifetime" or the time during which the owner retains an associated product to which the product may be attached. Most warranties are not dependent upon such external factors and when they are not, the warranty should "follow the product" rather than the original purchaser. It is therefore recommended:

RECOMMENDATION 2

PRODUCT WARRANTIES SHOULD BE TRANSFERABLE TO SUBSEQUENT OWNERS DURING THE PERIOD OF COVERAGE.

Restrictions on consumer usage may be reasonable but should be used only when the restriction has a real purpose. For example, consumers should not be misled to believe that mailing a registration card is a necessary precondition to obtaining the benefits of a warranty. In sum, any restriction or other obligations imposed upon the consumer should be clearly defined and carefully explained in the material available to the consumer at the time of purchase.

"Every consumer has the right to know the precise terms of the warranties received with products."

COMMUNICATION OF WARRANTIES

Every consumer has the right to know the precise terms of the warranties received with products. Ordinarily, there are three sources for this warranty information—advertising, point of sale representations, and the written warranties supplied by the warrantor. Each can be used to provide accurate and useful warranty information to the consumer, as discussed in the following sections.

Advertising

Advertising is a basic source of consumer knowledge about products, and warranties are sometimes mentioned as a part of these promotions. When warranties are mentioned in advertising,

care should be taken to insure that the consumer is not led to believe that the warranty protection offered is greater than it is in fact.

To correct advertising practices which may be misleading, guidelines have been developed by the Federal Trade Commission (FTC) and by a number of trade associations. (A full text of the FTC Guidelines appears in Appendix A.) Trade association guidelines usually address practices peculiar to their industries. This can be a useful, constructive activity, and it deserves encouragement by the nation's business community.

While guidelines of this type are useful to the preparation of advertising, the most critical consideration is the interpretation of the advertisement by the consumer. To insure that purchasers will not be misled, advertising involving warranties should be reviewed and, when appropriate, copy tested before release to evaluate the understanding of the warranty part of the message by typical consumers.

Point of Sale Information

While consumers may consider written information attached to a product, more frequently they will look to sales personnel for product information. Consumers can receive good information in this manner, but they can also be misled by ill-informed employees who simply tell the consumer what he wants to hear in order to make a sale. In most retail establishments, the dominant incentives on the sales floor relate to sales volume; complaints and warranty repair lie in another department. This is a serious problem for both retailers and manufacturers since consumers who are misled—intentionally or not—will return for redress. These complaints affect not only operating costs, but also corporate reputation.

In many retail establishments, sales personnel are engaged in the sale of hundreds of different products. It is unrealistic to assume that they will be completely knowledgeable about each and every product. In these cases, the

retail firm should maintain strong policies regarding sales representations, and sales personnel should be regularly instructed in their use. In those instances where it is possible, sales personnel should receive instruction on the presentation of specific product and warranty information, but at the very least they should be cautioned against giving significant information unless certain of its accuracy.

A few of the largest retailers can provide their own information on the products they sell, but otherwise the best source of information for the salesman to use in response to consumer inquiries is literature supplied by the manufacturer. To be useful, however, this information must be sufficiently complete, and yet simple and uncomplicated and readily available at the point of sale. Again, the incentives are too often on the side of exposing the pluses and avoiding the minuses. Careful review by the retailer is needed to be sure a factual and balanced picture is given to the ultimate consumer.

The Sub-Council therefore recommends:

RECOMMENDATION 3

MANUFACTURERS SHOULD PROVIDE CLEAR, COMPLETE, AND SIMPLE PRODUCT AND WARRANTY LITERATURE FOR USE BY SALES PERSONNEL AND BY CONSUMERS.

Written Warranties

The written warranty should be the primary source of information on this subject to the consumer. It should be drafted clearly and simply so that shoppers know precisely what protection is offered, and how to get it if problems arise with the product. All too frequently, however, written warranties are constructed in legal form, in a lengthy, complex style, and are next to impossible for the layman to comprehend. They appear to be communications to courts, not communications to purchasers. Whatever the nature of warranty coverage offered, it should be clearly communicated so that the typical consumer will understand it. The Sub-Council therefore recommends:

"... [warranties] appear to be communications to courts, not communications to purchasers."

RECOMMENDATION 4

WRITTEN PRODUCT WARRANTIES SHOULD BE EXPRESSED IN CLEAR AND SIMPLE LANGUAGE.

In carrying this out, manufacturers and retailers should consider the following factors:

1. Written warranties should specify:
   - the identity of the warrantor
   - the extent of parts coverage
   - whether labor is included
   - the specific duration of the warranty
   - where warranty service can be obtained
   - obligations of the owner
2. The format and headings should be selected to aid balanced communication of the contents.
3. Exceptions and exclusions should be given special prominence.

In short, the overall purpose of a written warranty should be to "say what it means and mean what it says."

Trade Association Role

Trade associations can be helpful in encouraging responsible warranty practices in simplification and communication. While the selection of specific warranty coverage must be left to individual warrantors, associations can take steps to stimulate the development of standardized definitions of terms commonly used in the industry, and can encourage members to simplify warranties so that consumers will understand the coverage offered. The Sub-Council therefore recommends:

RECOMMENDATION 5

TRADE ASSOCIATIONS SHOULD ESTABLISH AND COORDINATE INDUSTRY-WIDE PROGRAMS OF WARRANTY SIMPLIFICATION AND CLARITY.

An adequate association program of warranty simplification should include the following undertakings:

1. Standardization of the meaning of terms and affirmative claims used within the industry.

2. Development of guidelines for the information to be conveyed in warranties such as name and address of the warrantor, to whom the warranty is extended, the extent of parts coverage, the time during which the parts are covered, etc.
3. Development of guidelines for the appearance of warranties; such as, "all language should be clear and simple", "type size should be large enough to facilitate rapid reading and should be uniform throughout", etc.
4. Establishment of independent consumer panels to which members of the industry can voluntarily submit current warranty statements and contemplated revisions for review and comment on their understandability.

In the final analysis, warranty simplification programs will succeed only if association members are urged to adopt the association's recommendations and only if each member takes the steps necessary to insure that the warranties on his products are readily available for inspection by the consumer prior to sale.

"The consumer's need for warranty information continues and is more pronounced after the product has been purchased."

After Purchase Warranty Information

The consumer's need for warranty information continues and is more pronounced after the product has been purchased. There are a number of ways in which consumers can obtain this after-sale information. The first place a consumer should go to obtain product and warranty information is the store where he made the purchase. Ordinarily he can obtain the information needed from this source. If the consumer cannot get a satisfactory response from this action, he should contact a representative of the warrantor. Some companies have begun to encourage consumers to make toll-free calls to a centralized location to obtain product information. In other cases, metropolitan consumer response offices have been established to serve these needs. However organized, some convenient means of obtaining information on the product and its warranty should be available to consumers after sale.

III. Providing Warranty Service

CONSUMER EXPECTATIONS

The consumer with a warranty claim expects fast, effective, and convenient service. Providing that kind of service is a major problem for companies which offer product warranties.

"The consumer with a warranty claim expects fast, effective, and convenient service."

CHOICE OF SERVICING MECHANISM

Traditionally, the choice of the type of servicing has been dependent on the nature of the warrantor and the nature of the product.

Some warrantors have established their own regional service centers; others utilize authorized dealerships or may rely on independent servicing agencies. The choice of servicing mechanism is basically an operating decision but may be dependent to a large extent on the nature of the product. Warrantors of some products, such as watches, are able to provide all warranty service at one factory-owned service center.

The warrantor of major appliances and similar products faces a more difficult problem, since home servicing must be made available to the consumer. Thus, the warrantor must rely on a nationwide network of local service facilities.

INCREASING LIABILITY ON WARRANTORS

The responsibility for effective warranty servicing lies ultimately with the warrantor. This responsibility is of critical concern today for several reasons:

1. Consumer expectations are rising.
2. Civil product liability without regard to privity is being expanded by the courts.
3. Legislation imposing express duties of servicing on the warrantor has been enacted.

These factors require that warrantors carefully evaluate their servicing policies and practices to determine how they might be improved. Within this context, there are four policy areas which should be considered by each warrantor in evaluating his warranty practices:

1. Commitment to effective servicing,

2. Development of positive incentives to encourage performance of effective warranty servicing,
3. Strict quality control and inspection systems, and,
4. Complaint data collection and use.

COMMITMENT OF WARRANTORS TO EFFECTIVE SERVICE

Warranty service deserves high priority attention by manufacturers. Policies in this area need effective communication and enforcement, particularly to avoid any disincentives to effective servicing at the operating level.

"Commitment to after-sale servicing can fall victim to the greater commitment to sales."

Commitment to after-sale servicing can fall victim to the greater commitment to sales. It is understandable, but unfortunate from the consumer's standpoint, that businesses sometimes appear to be more concerned with sales than service. Most businessmen realize, however, that repeat sales are often dependent on the service a customer gets on products already purchased. Certain steps can be taken by warrantors to encourage more effective warranty service. A primary step involves an evaluation of the warrantor's commitment to warranty service as perceived by his dealers and servicing agents. It is thus necessary for the warrantor to review his policies and programs to determine whether they contain constraints against better service or whether they offer positive incentives. These policies deserve continuing attention by top management, and the Sub-Council therefore recommends:

RECOMMENDATION 6

WARRANTORS SHOULD SYSTEMATICALLY AND PERIODICALLY REVIEW WARRANTY SERVICE POLICIES AND PROGRAMS TO ELIMINATE UNNECESSARY CONSTRAINTS INHIBITING GOOD SERVICE. SIMILARLY, POSITIVE INCENTIVES SHOULD BE ADOPTED TO ENCOURAGE MORE EFFECTIVE WARRANTY SERVICE.

"... cutting costs on warranty service below those necessary to give quick and effective repair is one of the worst places this can be done."

This review should be based on the assumption that cutting costs on warranty service below those necessary to give quick and effective repair is one of the worst places this can be done. Consumers simply should not be given less than the full extent of their purchase, and responsive warranty service is probably the most critical element involved in terms of the customer's sensitivities and equity.

There are a number of additional areas in which improvements can be made which could lead to more effective warranty service. The following sections discuss some of these opportunities.

Adequacy of Compensation

One of the foremost complaints of service representatives is that they are not adequately compensated for warranty work. When this is true, the consumer usually ends up paying the difference.

The methods used by warrantors to pay for warranty work include:

1. *Inboarding.* Under this method, service agencies bill the warrantor for work performed. Some warrantors permit the agency to bill at the same rates used for customers for out-of-warranty service. More commonly, warrantors establish detailed schedules of the amounts that will be paid for each type of repair. These rates can be set too low to allow recovery of overhead, rising wages, and other variable costs. When this happens, the service agent loses money on warranty service and as a result he may emphasize out-of-warranty service, or subsidize warranty service by charging higher rates to paying customers. These practices are patently unfair and every step should be taken by manufacturers and dealers to see that the incentives which feed them are eliminated.
2. *Outboarding.* Under this method, an identifiable separate fee is added to the dealer's cost which covers factory or independent servicing supplied through the warrantor. The dealer who both sells and services receives a payment in the form of a discount off the price of each warranted product. If the dealer is not a servicing dealer, he must pay a wholesale price reflecting anticipated warranty expense. The amount paid above the discounted wholesale price is then paid to local servicers as a fee for warranty work. Theoretically, this type

of practice discourages unnecessary warranty work. At the same time, however, it can discourage warranty work that is needed either because the dealer bargains away the funds needed for this coverage through lower product pricing; or simply retains the reserves as profits.

A number of variations on the foregoing methods are used but these represent the basic arrangements. Whatever method of payment is used, the warrantor should insure that the servicer is adequately compensated on a reasonable basis for his work, including the cost of diagnosis and profit, as well as repair costs. Thus, the Sub-Council recommends:

RECOMMENDATION 7

WARRANTORS SHOULD REGULARLY REVIEW WARRANTY POLICIES ON COMPENSATION TO SERVICING AGENCIES TO INSURE THAT THEY ADEQUATELY COVER ALL REASONABLE EXPENSES.

This policy is an especially important part of responsible warranty administration by manufacturers, and it should be given careful, continuing attention by top management.

"Delays in warranty service constitute one of the most annoying situations facing consumers..."

Parts Availability

Delays in warranty service constitute one of the most annoying situations facing consumers, and often this is attributable to the servicer's lack of parts. In many instances, these delays cause considerable economic loss to the consumer, as when a freezer fails and the food it contains spoils for lack of immediate repair. Even when economic loss is not present, the inconvenience involved can be a major irritant.

As a standard procedure, the warrantor should require authorized servicers to maintain an adequate parts supply, and this should be made a condition of authorization. In addition, the warrantor should continually evaluate his own system of supplying parts to improve its efficiency, and to adapt to changing conditions.

"The lack of qualified mechanics is one of the most serious problems facing warrantors and servicers alike."

Qualified Mechanics

The lack of qualified mechanics is one of the most serious problems facing warrantors and servicers alike. A num-

ber of actions can be considered by warrantors to improve the situation:

- *Design Improvement:* Given both the scarcity of qualified mechanics and rising labor costs, there is advantage in designing products whenever possible with routine parts replacement rather than more complicated repairs in mind. Many consumer durables have employed modular construction and this practice should receive consideration by all product manufacturers.
- *Factory Training:* A number of warrantors offer factory courses on the repair of their products. Ideally, this training should be offered to employees of servicers at no cost. For complex products, it should be a condition of employment for servicing personnel.
- *Technical Assistance:* Mechanics who service warranted goods cannot be expected to diagnose and repair every problem. Therefore, warrantors should provide easily available technical assistance, through district representatives, the establishment of toll-free "hot-lines" for mechanics, or other means.
- *Repair Information & Kits:* Detailed written repair information should be available for service mechanics and should include exploded diagrams. Similarly, consideration should be given to including in owners' manuals descriptions of repairs that can be made safely by the consumer.
- *Use & Care Manuals:* Use and care manuals should provide the consumer with the information he needs to understand the product and use it responsibly. Often these documents highlight the product's benefits and satisfactions, but their prime purpose should be to aid the consumer in its proper use and in avoiding misuse.

These are some of the areas for positive action on warranty servicing. Additionally, warrantors should consider employee, dealer, and service agent promotional campaigns to encourage more effective service. Programs used to promote sales should be examined for their applicability in this regard.

"...all the incentives suggested will be of little benefit unless they are supplemented by strict quality standards for servicing."

Quality Control and Inspection

In a loosely knit network of servicing facilities, all the incentives suggested will be of little benefit unless they are supplemented by strict quality standards for servicing. These standards are the warrantor's responsibility, and they should include reasonable guidelines for quantity and quality of repair personnel, the number and types of tools which should be available, and servicing facilities. The service agency's role in providing these resources for the level of business to be performed by that agency should also be established.

These quality standards should describe in detail the practices which will and will not be permitted. To insure compliance, each warrantor should have inspection teams regularly review servicing facilities, and audit service carried out in homes and other locations. The standards for treatment of customers should also be included, such as courtesy and estimation of repair costs before they are made.

Collection of Complaint Data

A quality control system designed to insure effective warranty servicing cannot afford to rely solely upon high standards and in-house inspectors. It should also utilize other data collection avenues.

The growth of consumerism has seen a concomitant growth in the number of governmental agencies involved in protecting consumer rights. These agencies daily receive hundreds of complaints from consumers. While warrantors should be aware of activities at the Federal level, their best governmental source of data regarding specific complaints about warranty service can probably be found with state and local consumer protection agencies. Ordinarily these agencies have neither the resources nor the authority to make all complaints about a specific product or business available in published form. Complaints are usually reviewed for possible investigation and are tabulated in very general terms.

"Responsible warrantors recognize the common bond existing between themselves and consumer protection agencies."

Responsible warrantors recognize the common bond existing between themselves and consumer protection agencies. These agencies can provide valuable information to warran-

tors about the effectiveness of their own warranty servicing systems, and provide an opportunity for the company to identify and resolve consumer problems. The Sub-Council therefore recommends:

RECOMMENDATION 8

WARRANTORS SHOULD ESTABLISH DIRECT WORKING RELATIONSHIPS WITH CONSUMER PROTECTION AGENCIES AND ASSIST THESE AGENCIES IN RESOLVING CONSUMER PROBLEMS.

In addition to this practice for individual warrantors, trade associations are ideally suited to establish consumer complaint centers. One of the most successful efforts of this type has been the Major Appliance Consumer Action Panel (MACAP). MACAP was established by the Association of Home Appliance Manufacturers, the Gas Appliance Manufacturers Association and the American Retail Federation following publication of a government report on warranties and servicing in the appliance industry. It is an autonomous group which collects complaint data and attempts to resolve the problems involved. Acting independently from the industry which supports it, MACAP has demonstrated a workable program which deserves imitation in other product lines. The Sub-Council therefore recommends:

"...trade associations are ideally suited to establish consumer complaint centers."

RECOMMENDATION 9

WARRANTORS SHOULD ENCOURAGE AND SUPPORT AUTONOMOUS INDUSTRY-WIDE CONSUMER COMPLAINT REVIEW PANELS ESTABLISHED BY TRADE ASSOCIATIONS.

With the continued development of mass produced consumer goods, and the proliferation of large multi-purpose retail outlets, manufacturer/warrantors can become isolated from consumers of their products. In response to this problem, some manufacturers are encouraging dissatisfied consumers to call directly, rather than confine their personal contact to the retail or servicing outlet. This benefits both parties—the consumer avoids unnecessary contacts and the warrantor gets an immediate signal of trouble.

An effective system of this type requires the full support of top management and it should be placed at a high organizational level where the authority exists to insure that consumer problems will be solved.

". . . some manufacturers are encouraging dissatisfied consumers to call directly, rather than confine their personal contact to the retail or servicing outlet."

IV. Conclusion

The foregoing report has outlined ways in which businesses might act to improve warranty practices. Ultimately, these improvements can only be found if the warrantors themselves take steps to find and use them.

It is the hope of the Sub-Council on Warranties and Guarantees that businesses will take this action, and that this report will be a helpful starting point.

Appendix A

FEDERAL TRADE COMMISSION
Washington

Guides Against Deceptive Advertising of Guarantees

The following Guides have been adopted by the Federal Trade Commission for the use of its staff in evaluation of the advertising of guarantees. They have been released to the public in the interest of education of the businessman and the consumer and to obtain voluntary, simultaneous and prompt cooperation by those whose practices are subject to the jurisdiction of the Federal Trade Commission.

The Guides enumerate the major principles applicable to the advertising of guarantees although they do not purport to be all-inclusive and do not attempt to define the exact border lines between compliance with and violation of the law.

The Federal Trade Commission Decisions, upon which these Guides are based, indicate that the major difficulty with this type of advertising has been the failure to state adequately what the guarantee is. Concerning this, an appellate court stated: "Ordinarily the word, guarantee, or warrantee, is incomplete unless it is used in connection with other explanatory words. To say a . . . [product] or other subject is guaranteed is meaningless. What is the guarantee? The answer to this question gives meaning to the word, 'guaranteed.' "

The Guides have application not only to "guarantees" but also to "warranties," to purported "guarantees" and "warranties," and to any promise or representation in the nature of a "guarantee" or "warranty."

Adversary actions against those who engage in deceptive advertising of guarantees and whose practices are subject to Commission jurisdiction are brought under the Federal Trade Commission Act (15 U.S.C., Secs. 41–58). Section 5 of the Act declares unlawful "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

The Guides

In determining whether terminology and direct or implied representations concerning guarantees, however made, i.e., in advertising or otherwise, in connection with the sale or offering for sale of a product, may be in violation of the Federal Trade Commission Act, the following general principles will be used:

I Guarantees in General.

In general, any guarantee in advertising shall *clearly and conspicuously disclose*—

(a) *The nature and extent of the guarantee.*
This includes disclosure of—

(1) What product or part of the product is guaranteed,

(2) What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee,

(3) What is the duration of the guarantee,

(4) What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges;

and

(b) *The manner in which the guarantor will perform.*
This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out;

and

(c) *The identity of the guarantor.*
The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.

II Prorata Adjustment of Guarantees.

Many guarantees are adjusted by the guarantor on a prorata basis. The advertising of these guarantees should clearly disclose this fact, the basis on which they will be prorated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

If these guarantees are to be adjusted on the basis of a price other than that paid by the purchaser, this price should be clearly and conspicuously disclosed.*

Example: "A" sells a tire with a list price of $48 to "B" for $24, with a 12 months guarantee. After 6 months use the tire proves

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**(Note: Guarantees which provide for an adjustment based on a fictitious list price should not be used even where adequate disclosure of the price used is made.)*

defective. If "A" adjusts on the basis of the price "B" paid, $24; "B" will only have to pay ½ of $24, or $12, for a new tire. If "A" instead adjusts on the basis of list price, "B" will owe ½ of $48, or $24, for a new tire. The guarantor would be required to disclose here the following: that this was a 12 months guarantee, that a list price of $48 would be used in the adjustment, that there would be an adjustment on the basis of the time that the tire was used, and that he would not pay the adjusted amount in cash, but would make an adjustment on a new tire.

III "Satisfaction or Your Money Back" Representations.

"Satisfaction or Your Money Back," "10 Day Free Trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded at the option of the purchaser.

If this guarantee is subject to any conditions or limitations whatsoever, they shall be set forth as provided for in Guide I.

Example: A rose bush is advertised under the representation "Satisfaction or Your Money Back." The guarantor requires return of the product within one year of purchase date before he will make refund. These limitations, i.e., "return" and "time" shall be clearly and conspicuously disclosed in the ad.

IV Lifetime Guarantees.

If the words "Life," "Lifetime," or the like, are used in advertising to show the duration of a guarantee, and they relate to any life other than that of the purchaser or original user, the life referred to shall be clearly and conspicuously disclosed.

Example: "A" advertised that his carburetor was guaranteed for life, whereas his guarantee ran for the life of the car in which the carburetor was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the "life" referred to.

V Savings Guarantees.*

Advertisements frequently contain representations of guarantees that assure prospective purchasers that savings may be realized in the purchase of the advertiser's products.

Some typical advertisements of this type are "Guaranteed to save you 50%," "Guaranteed never to be undersold," "Guaranteed lowest price in town."

These advertisements should include a clear and conspicuous disclosure of what the guarantor will do if the savings are not real-

(Note: The above guarantees may constitute affirmative representations of fact and, in this respect, are governed by Guide VII.)

ized, together wtih any time or other limitations that he may impose.

Example: "Guaranteed lowest price in town" might be accompanied by the following disclosure:

"If within 30 days from the date that you buy a sewing machine from me, you purchase the identical machine in town for less and present a receipt therefor to me, I will refund your money."

VI Guarantees Under Which the Guarantor Does Not or Cannot Perform.

A seller or manufacturer should not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

A specific example of refusal to perform obligations under the guarantee is use of "Satisfaction or your money back" when the guarantor cannot or does not intend promptly to make full refund upon request.

VII Guarantee as a Misrepresentation.

Guarantees are often employed in such a manner as to constitute representations of material facts. If such is the case, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

Example 1: "Guaranteed for 36 months" applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

Example 2: "Guaranteed to grow hair or money back" is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

Example 3: "Guaranteed lowest prices in town" is a representation that the advertiser's prices are lower than the prices charged by all others for the same products in the same town and should not be used when such is not the fact.

Example 4: "We guarantee you will earn $500 a month" is a representation that prospective employees will earn a minimum of $500 each month and should not be used unless such is the fact.

Nothing contained in these Guides relieves any party subject to a Commission cease and desist order or stipulation from complying with the provisions of such order or stipulation. The Guides do not constitute a finding in and will not affect the disposition of any formal or informal matter before the Commission.

Adopted April 20, 1960

Robert M. Parrish,
Secretary

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